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## DAVIS et al. v. OWEN.

Sept. 12, 1907.

[58 S. E. 581.]

**1. Adverse Possession—Hostile Character.**—An owner of land conveyed to certain school trustees a portion thereof, definitely described by metes and bounds, to be used for the erection of a public school for colored people. Before the schoolhouse was built the colored people of the community offered to contribute to its erection if they could hold religious services therein, which was agreed to. After the erection of the schoolhouse a rail fence was built on the remainder of the land, which cut it off from not only the schoolhouse lot, but also a piece of land, containing 1 1-14 acres, between it and the fence. Subsequently such religious organization, with the consent of the school district trustees, erected a church building and located a graveyard, part of each of which was on the 1 1-14 acres; the trustees of both the school district and the religious organization believing that the same were entirely on the schoolhouse lot. Held, in an action by the trustees of the religious organization to quiet title, that such encroachment on the 1 1-14 acres could not ripen into a title by adverse possession, since, their right being subordinate to the right of the school trustees, who claimed nothing except the schoolhouse lot, they could not obtain a greater right.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 1, Adverse Possession, §§ 282-286.]

**2. Same—Entry and Possession by Mistake.**—The erection of a part of a church building and the location of a graveyard on another's land under the mistaken belief that the same was part of land of one who had authorized such erection and location, and without any claim of right by those performing such acts or by those authorizing the same, cannot ripen into title by adverse possession.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 1, Adverse Possession, § 365.]

**3. Estoppel—Knowledge of Facts.**—Where the owner of land made no objection to the erection of a part of a church and the location of a part of a graveyard on his land, under the mistaken belief that they were entirely on the land of an adjoining owner, he is not thereby estopped from asserting his title on discovery that the same are on his land.

## BATTERSHALL et al. v. ROBERTS.

Sept. 12, 1907.

[58 S. E. 588.]

**Exceptions, Bill of—Time for Presentation, Allowance, and Filing.**—Va. Code 1904, § 3385, provides that a bill of exceptions may be